

RECEIVED
C-11-0488
AUG 17 2011

ATTACHMENT "A"

AGREEMENT

LANCASTER COUNTY
CLERK

THIS AGREEMENT is entered into by and between the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "the City," and the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as "the County."

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 *et seq.* (Reissue 1997), permits units of local government in the State of Nebraska to cooperate with other localities on a basis of mutual advantage and thereby provide services in a manner that will best serve local communities; and

WHEREAS, pursuant to *Neb. Rev. Stat.* §15-229, the City has the authority to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for any present or future necessary or authorized public purpose within or without the city by gift, agreement, purchase, condemnation, or otherwise; and

WHEREAS, Lancaster County and the City of Lincoln are responsible for providing road improvement and maintenance to the streets and roads located within their respective jurisdictions; and

WHEREAS, the County and the City agree that it is mutually beneficial for adding turn lanes at North 95th Street and Holdrege Street which is more particularly described as Holdrege Street from North Linwood Lane to a point 1,370 feet east of North Linwood Lane; and

WHEREAS, a portion of the proposed construction is located within the County and the City seeks the approval of the County to proceed with construction.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the parties as follows:

1) Length. The length of this Agreement shall be from the date of execution until the completion of the above described paving project, estimated to be the Fall of 2011. The City's responsibility for maintenance of the new section of Holdrege Street shall survive termination of this Agreement or expiration of this Agreement.

2) Purpose. The purpose of this Agreement is to provide for adding turn lanes at North 95th Street and Holdrege Street, including the acquisition of needed right-of-way, and the establishment of maintenance responsibilities thereafter. The project lies partially outside the City limits of the City of Lincoln.

3) Responsibilities. The County will have the following duties and responsibilities:

- A. The County shall give permission to the City for the turn lanes, including the acquisition of any needed right-of-way, and reconstruction work diagramed in Attachment "A", which is attached hereto and incorporated by this reference.

The City will have the following responsibilities:

- A. The City shall be responsible for the cost of turn lanes, including the acquisition of any needed right-of-way, and work which is described herein and diagramed in Attachment "A". Needed right-of-way may be acquired by the City through condemnation if necessary.
- B. The City is responsible for ensuring that the paving and construction work is completed as described herein and diagramed in Attachment "A".
- C. The City shall be responsible for all maintenance of what is diagramed in Attachment "A" as the new section of Holdrege Street. This responsibility shall survive the termination of this Agreement or expiration of this Agreement.
- D. Title - All land acquired for right-of-way pursuant to this agreement shall be held in the name of the County for public right-of-way, until annexed by the City.

4) Compensation. The County gives the City permission for the turn lanes including acquisition of needed right-of-way by the City through condemnation if necessary, and reconstruction work described herein. The City shall be responsible for all of the cost of the turn lanes, including acquisition of needed right-of-way, and reconstruction work described herein. The City shall also be responsible for maintenance of the new section of Holdrege Street.

5) Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the City shall not be deemed to be employees of the County and employees of the County shall not be deemed to be employees of the City.

6) Assignment. Neither the County nor the City shall assign its duties and responsibilities under this Agreement without the express written permission of the other party to this agreement. It is expressly understood and agreed to by the parties that the City may subcontract the paving and construction services outlined herein.

7) Construction Area Control. To the extent permitted by law, the County relinquishes control of the construction area to the City and its Contractors during the period of construction. The design, construction, placement of barricades, and posting of warning signs in the area of construction will be the responsibility of the City. This shall include the placement of construction equipment and any obstacles which are created as a result of the construction project. The placement of barricades and warning signs shall be in compliance with the Manual on Uniform Control Devices and the 2007 English Edition of the Standard Specifications of Highway Construction, of the State of Nebraska. To the extent permitted by law, the City expressly accepts control of the construction area, such control shall include, but not be limited to, barricades, road crossings, construction equipment and any obstacles created during construction of the project.

8) Hold Harmless. Each party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other party and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of their principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, each party shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require either party to indemnify or hold harmless the other party from liability for the negligent or wrongful acts or omissions of said other party or its principals, officers, or employees.

9) Subcontractors. The City agrees to require any contractors or subcontractors, providing services under this agreement, to indemnify and hold the County harmless to the same extent and as provided in Section 8 of this Agreement.

10) Severability. If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

11) Equal Employment Opportunity. In connection with the carrying out of the activities provided herein, neither the County nor the City shall discriminate against any bidder, employee, applicant for employment, or any other person because of race, color, religion, sex, disability, national origin, age, marital status or receipt of public assistance.

12) Termination. This agreement may be terminated by either party for any reason, prior to the City incurring any financial obligation as a result of the agreement, with thirty (30) days written notice of the termination.

13) The City further agrees that it shall require its contractors and subcontractors, providing services under this Agreement, to agree to the following clause by including it in its subcontractor

agreements:

Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship, and the Contractor, or any employees or other persons acting on behalf of the Contractor in the performance of this Agreement, shall be deemed to be independent contractor(s) during the entire term of this Agreement or any renewals thereof. It is agreed between the parties that the designated staff shall at all times continue to be employees of the Contractor for the duration of the Agreement. The Contractor shall be responsible for all salary and benefits payable under this Agreement and the Contractor's employees shall not be entitled to any salary from the City or the County or to any benefits made to City or County employees, including, but not limited to, overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. The Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance and any applicable malpractice insurance coverage for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to the employee's compensation.

14) The City shall require any contractors and subcontractors, providing services under this Agreement, to agree to the insurance clause to be used for all City contracts, as provided in Attachment "B" attached hereto and incorporated by this reference.

The Contractor shall not commence work under this Agreement until it has obtained all insurance required pursuant to Attachment "B" and has provided the City and the County with a Certificate of Insurance showing the specific limits of insurance required by Attachment "B" and showing the City of Lincoln and Lancaster County as an additional insured. The Contractor is required to provide the City and the County with thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement.

15) This agreement constitutes the entire agreement between the parties with respect to the subject matter herein and merges all prior discussions between them. It shall not be modified except by written agreement dated subsequent to the date of this Agreement and signed by all parties.

EXECUTED this 23 day of August, 2011, by Lancaster County, Nebraska.

By:

Jane Yarby
Bennie Kue
Dale Shorr
Darryl Hulless
Bob Dugay

APPROVED AS TO FORM:

This 23 day of
Aug, 2011.

Brittany Behrens
Deputy County Attorney
for JOE KELLY
County Attorney

EXECUTED this _____ day of _____, 2011, by the City of Lincoln, Nebraska.

City of Lincoln

By: _____
Mayor Chris Beutler

APPROVED AS TO FORM:

This _____ day of _____, 2011.

City Attorney
RODNEY CONFER

